

Chicago Marine Containers, Inc. and United Electrical, Radio and Machine Workers of America.
Case 13-CA-21935

June 18, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on January 25, 1982,¹ by United Electrical, Radio and Machine Workers of America, herein called the Union, and duly served on Chicago Marine Containers, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on February 22, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 19, 1981, following a Board election in Case 13-RC-15722,² the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about September 8, 1981, and by letter dated October 8, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 3, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 31, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on April 2, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show

Cause why the General Counsel's Motion for Summary Judgment should not be granted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint Respondent admits the refusal to recognize and bargain with the Union but denies that its conduct violated Section 8(a)(5) and (1) of the Act. Respondent raised no affirmative defenses in its answer. The General Counsel argues that Respondent's pleading in this proceeding is an attempt to relitigate issues that were or could have been disposed of in the underlying representation case. We agree with the General Counsel.

Our review of the record, including the record of the underlying representation case (Case 13-RC-15722), reveals that the Acting Regional Director for Region 13 issued a Decision and Direction of Election on May 26, 1981, in which he found appropriate a unit of all hourly production and maintenance employees of the Employer at its plant presently located at 25th Avenue and Cermak Road, Broadview, Illinois, excluding all office clerical employees, plant clerical employees, professional employees, technical employees, managerial employees, guards and supervisors as defined in the Act, as amended. In so doing, the Acting Regional Director denied Respondent's request to postpone indefinitely the election due to a layoff of a substantial portion of the unit employees on the grounds that there was no evidence in the record upon which to predicate such a ruling. Thereafter, Respondent timely filed a request for review of the Acting Regional Director's decision contending, *inter alia*, that his decision is clearly erroneous in denying the Employer's request for a postponement of the election because it would not effectuate the purposes of the Act to hold an election while a substantial percentage of employees eligible to vote are on indefinite layoff. Also, on June 9, 1981, Sheet Metal Workers International Association, Local 115, AFL-CIO, herein called the Intervenor, filed a request for review with the Board. On June 26, 1981, the Board denied Respondent's and the Intervenor's requests for review. Pursuant to the Regional Director's direction an election was conducted on July 1, 1981, in the unit found appropriate. The tally of ballots indicated 137 votes for the Petitioner, 12 votes for the Intervenor, 4 votes

¹ On February 16, 1982, the Union requested, and on February 22, 1982, the Regional Director for Region 13 granted, withdrawal of that portion of the charge alleging that Respondent made certain unilateral changes in violation of Sec. 8(a)(5) and (1) of the Act. As a result the charge herein is limited to an allegation of a refusal to bargain.

² Official notice is taken of the record in the representation proceeding, Case 13-RC-15722, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

against the participating labor organizations, and 2 challenged ballots.

On July 8, 1981, Respondent filed timely objections to conduct affecting the results of the election alleging, *inter alia*, that the Petitioner made material misrepresentations, threatened employees, and impugned the integrity of the Board's processes by alleging that the Employer attempted to delay the election by requesting a representation hearing. On August 19, 1981, the Regional Director for Region 13 issued a Supplemental Decision on Objections in which he overruled Respondent's objections in their entirety and issued a Certification of Representative. On August 27, 1981, Respondent filed with the Board a request for review of the Regional Director's Report on Objections. On September 24, 1981, the Board denied the request for review because it raised no substantial issues warranting review.

On September 8 and 25, 1981, the Union, by registered letter, requested Respondent to recognize and bargain with it as the exclusive representative of its employees in the appropriate unit. Additionally, on or about September 25 and 29, October 12, and December 22, 1981, and January 7, 1982, the Union orally requested Respondent to commence bargaining. By letter dated October 8, 1981, Respondent informed the Union that it was rejecting the September 8, 1981, request to bargain; by notice dated October 12, 1981, and posted to the company bulletin board, Respondent informed its employees that it would not bargain unless ordered to do so by the United States Court of Appeals for the Seventh Circuit. In its answer to the complaint, Respondent admits that it has refused and continues to refuse to recognize and bargain with the Union.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor

practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation, with an office and place of business in Broadview, Illinois, herein called Respondent's facility, where it is engaged in the manufacture and nonretail lease and distribution of metal shipping containers and related products. During the calendar year ending December 31, 1981, a representative period, Respondent, in the course and conduct of its business operations, purchased and received at its Broadview, Illinois, facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.⁴

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All hourly production and maintenance employees of the Employer at its plant presently located at 25th Avenue and Cermak Road, Broadview, Illinois excluding all office clerical employees, plant clerical employees, professional employees, technical employees, managerial employees, guards and supervisors as defined in the Act, as amended.

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

⁴ In its answer to the complaint, Respondent asserted it was without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that the Union is a labor organization within the meaning of the Act. We note that, in the underlying representation case, the Regional Director found that the Union was such a labor organization and no exceptions were filed to his finding.

2. The certification

On July 1, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 13, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on August 19, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about September 8 and 25, 1981,⁵ by letter, and on or about September 25 and 29, October 12, and December 22, 1981, and January 7, 1982, orally, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 8, 1981, including by letter dated October 8, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since September 8, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and,

upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Chicago Marine Containers, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Electrical, Radio and Machine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All hourly production and maintenance employees of the Employer at its plant presently located at 25th Avenue and Cermak Road, Broadview, Illinois, excluding all office clerical employees, plant clerical employees, professional employees, technical employees, managerial employees, guards and supervisors as defined in the Act, as amended, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 19, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 8, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed

⁵ The complaint erroneously places these dates in 1982.

them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Chicago Marine Containers, Inc., Broadview, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Electrical, Radio and Machine Workers of America as the exclusive bargaining representative of its employees in the following appropriate unit:

All hourly production and maintenance employees of the Employer at its plant presently located at 25th Avenue and Cermak Road, Broadview, Illinois excluding all office clerical employees, plant clerical employees, professional employees, technical employees, managerial employees, guards and supervisors as defined in the Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at Respondent's Broadview, Illinois, facility located at 25th Avenue and Cermak Road copies of the attached notice marked "Appendix."⁶

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Electrical, Radio and Machine Workers of America as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All hourly production and maintenance employees of the Employer at its plant presently located at 25th Avenue and Cermak Road, Broadview, Illinois excluding all office clerical employees, plant clerical employees, professional employees, technical employees, managerial employees, guards and supervisors as defined in the Act, as amended.

CHICAGO MARINE CONTAINERS, INC.